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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 151201999-6115-01]

RIN 0648-BF51

Standardized Bycatch Reporting Methodology

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: The National Marine Fisheries Service proposes a rule to implement the requirement under the Magnuson-Stevens Fishery Conservation and Management Act that all fishery management plans (FMPs) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in a fishery. The proposed rule provides guidance to regional fishery management councils and the Secretary of Commerce regarding the development, documentation, and review of such methodologies, commonly referred to as Standardized Bycatch Reporting Methodologies (SBRMs).

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2016-0002, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2016-0002.

0002 click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Send written comments to Karen Abrams, National Marine Fisheries Service, 1315 East West Highway, SSMC3-OSF-SF3, Silver Spring, MD 20910

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous), and will accept attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Karen Abrams 301-427-8508.

SUPPLEMENTARY INFORMATION:

Background

Section 303(a) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1853(a)) describes 15 required provisions of any fishery management plan (FMP) prepared by a regional fishery management council or the Secretary of Commerce with respect to any fishery (hereafter “Council” includes the regional fishery management councils and the Secretary of Commerce, as appropriate (*see* 16 U.S.C. 1854(c) and (g))). This proposed rule focuses on section 303(a)(11), which requires that all FMPs establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable, minimize bycatch

and bycatch mortality. The section 303(a)(11) standardized reporting methodology is commonly referred to as a “Standardized Bycatch Reporting Methodology” (SBRM), and this proposed rule defines, interprets, and provides guidance on the basic requirements for the SBRM.

Section 303(a)(11) was added to the MSA by the Sustainable Fisheries Act of 1996 (SFA). All FMPs have been amended to reflect the SBRM requirement. The SFA also added a definition for “bycatch” (section 3(2), 16 U.S.C. 1802(2)) and National Standard 9 (section 301(a)(9), 16 U.S.C. 1851(a)(9)). The MSA defines “bycatch” as fish which are harvested in a fishery, but which are not sold or kept for personal use, and as including economic discards and regulatory discards. The definition of bycatch does not include fish released alive under a recreational catch and release fishery management program. The MSA does not define “standardized reporting methodology” or any of the words contained within the phrase. Similar to section 303(a)(11), National Standard 9 (16 U.S.C. 1851(a)(9)) requires that conservation and management measures “shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.” However, National Standard 9 does not address SBRM. NMFS has never issued regulations that set forth the agency’s interpretation of the SBRM provision.

To implement the 1996 SFA Amendments, NMFS developed advisory guidelines for National Standard 9 (guidelines) in 1998, and further amended the guidelines in 2008. The guidelines provide several clarifications about bycatch requirements under the MSA, but do not directly address SBRM. For example, the guidelines explain that “bycatch” includes the discard of whole fish at sea but does not include legally-retained fish kept for personal, tribal or cultural use (50 CFR 600.350(c)). In addition, to facilitate the evaluation of conservation and management measures consistent with National Standard 9, the guidelines call for the

development of a database on bycatch and bycatch mortality in the fishery to the extent practicable. The guidelines note that, to comply with National Standard 9 and MSA sections 303(a)(11) (SBRM) and (12) (catch and release), a review and, where necessary, improvement of data collection methods, data sources and applications must be initiated for each fishery to assess bycatch and bycatch mortality. *See* 50 CFR 600.350(d)(1).

In 2004, NMFS published *Evaluating Bycatch: A National Approach to Standardized Bycatch Monitoring Programs* (NOAA Technical Memorandum NMFS-F/SPO-66, October 2004, hereafter referred to as *Evaluating Bycatch*), a report that was prepared by the agency's National Working Group on Bycatch (available at http://www.nmfs.noaa.gov/by_catch/SPO_final_rev_12204.pdf). The report discusses regional bycatch and fisheries issues, the advantages and disadvantages of different reporting/monitoring measures, and precision goals for bycatch estimates. *See Evaluating Bycatch* at Chapters 3, 4, and 5. However, *Evaluating Bycatch* addresses more than bycatch as defined under the MSA; it also addresses interactions with species protected under the Endangered Species Act and Marine Mammal Protection Act. The report also acknowledges that its goals "may in some instances exceed minimum statutory requirements." *See Evaluating Bycatch* at Appendix 5. In summary, the report does not provide the agency's interpretation of the basic requirements of complying with MSA section 303(a)(11).

Purpose and Scope

This proposed rule, which is promulgated pursuant to MSA section 305(d) (16 U.S.C. 1855(d)), is intended to establish national requirements and guidance for establishing and reviewing SBRMs under section 303(a)(11) of the MSA. This rule solely addresses reporting methodology requirements pertaining to "bycatch" as defined under the MSA. (*See* the

Background subheading for a definition.) The Endangered Species Act and the Marine Mammal Protection Act create additional, important bycatch-related responsibilities for NOAA Fisheries, but discussion of such responsibilities is beyond the scope of this proposed rule. As explained below, there are several reasons why NMFS is undertaking this rulemaking.

NMFS has never issued regulations that set forth the basic requirements of the SBRM provision of section 303(a)(11). Although the National Standard 9 guidelines and *Evaluating Bycatch* discuss the SBRM provision, neither provides an interpretation of, or purports to set forth the basic requirements for complying with, the provision. In the absence of a national SBRM regulation, some Councils appear to have adopted the recommendations in *Evaluating Bycatch* as though they set forth mandatory requirements for a bycatch reporting methodology. Others have not followed the recommendations in *Evaluating Bycatch*, or have adopted only some of them. NMFS believes that the apparent confusion regarding the applicability of the recommendations in *Evaluating Bycatch* necessitates clear guidance regarding what the SBRM provision requires, what is needed for fishery conservation and management, and what is feasible to implement.

In addition, since the 1996 SFA amendments, there have been legal challenges to the SBRMs established in some FMPs. Court decisions have focused largely on the specific allegations and records before the courts, and have addressed only certain aspects of the SBRM provision and the agency's implementation of that provision. Therefore, NMFS believes that a comprehensive analysis of the MSA requirements in section 303(a)(11) through a rulemaking action is necessary in order to prevent inconsistent implementation of the provision, on a region-by-region basis in response to fact-specific litigation.

Finally, public concern about bycatch and public expectations for accessing bycatch

information and estimates continues to grow, while concerns from the regulated community about the costs for fishery monitoring and reporting requirements also continues to increase. NMFS intends to address some of these concerns in this action.

Overview of the Proposed Rule

As described in detail below, this proposed rule explains the purpose of a standardized bycatch reporting methodology (SBRM), and clarifies the activities associated with the phrase “standardized reporting methodology” and the meaning of the term “standardized.” This action would require that a standardized reporting methodology be appropriate for a particular fishery, and would provide required and discretionary factors for the Councils to consider when establishing or reviewing a methodology. Recognizing that there may be a future need to adjust how an SBRM is implemented, NMFS also proposes requirements for an adjustment process, if a Council is interested in exploring such a process. Finally, this proposed rule would provide for periodic review of existing SBRMs.

Purpose of an SBRM

Proposed section 600.1600 states that the purpose of a standardized reporting methodology is to inform the assessment of the amount and type of bycatch occurring in the fishery for use in developing conservation and management measures that, to the extent practicable, minimize bycatch and bycatch mortality. *See* 16 U.S.C. 1853(a)(11). The text refers to “inform[ing]” assessment of bycatch, as the data resulting from an SBRM are used along with other information for bycatch assessment and estimation purposes. (*See Activities Associated with an SBRM*, below, for further explanation.) Proposed section 600.1610(a)(2)(i) requires that the data resulting from the methodology be useful, in conjunction with other relevant sources of data, in meeting the purpose of the methodology as described in section 600.1600 and fishery-

specific bycatch objectives. (*See Considerations for Establishing or Reviewing an SBRM*, below, for an explanation of other required and discretionary factors.)

Activities Associated with an SBRM

An SBRM could include one or a combination of data collection and reporting programs, such as observer programs, electronic monitoring and reporting technologies, and self-reported mechanisms (e.g., recreational sampling, and industry-reported catch and discards). Proposed section 600.1605(a) defines “standardized reporting methodology” with reference to the collection, recording, and reporting of bycatch data in a fishery, which is connected to, but distinct from the methods used to assess bycatch and the development of measures to minimize bycatch or bycatch mortality. NMFS believes that it is important to distinguish between methods to collect and report bycatch data in a fishery with actions to assess and minimize bycatch. This distinction will help clarify the key policy choices and objectives associated with establishing a reporting methodology, so as not to confuse those choices with statistical and technical approaches for estimating bycatch that are inherently scientific and data dependent or the policy choices associated with developing measures to minimize bycatch.

The distinction between data collecting, reporting, etc., and developing management measures is reflected in part in the fact that section 303(a)(11) requires the establishment of SBRMs, and separately, section 303(a)(11) and National Standard 9 requires that FMPs include conservation and management measures that, to the extent practicable, minimize bycatch and bycatch mortality. As a practical matter, there are multiple steps leading to the development of conservation and management measures that address bycatch. First, bycatch data are collected, recorded, and reported pursuant to an SBRM. The *2011 U.S. National Bycatch Report* (NOAA Technical Memorandum NMFS-F/SPO-117E) describes how data from SBRMs are used in

combination with other information, such as fishing effort, fishery independent data, and other data (pages 90,155, 219, 319, 350, and 373), to develop total estimates of bycatch by fishery. Second, bycatch data from an SBRM, as well as other information about the fishery, are used to assess (e.g. evaluate or estimate) the amount and type of bycatch in a fishery. A variety of different models can be used to estimate bycatch. The models and combination of data used to estimate bycatch vary from region to region and across fisheries, depending on a variety of factors, including the characteristics of the fishery and the data available to manage the fishery. The resulting estimates are often provided in Stock Assessment and Fishery Evaluation (SAFE) reports. Finally, bycatch data and estimates are used to inform a Council in the development of conservation and management measures to minimize bycatch and bycatch mortality to the extent practicable. (This information may also be used by Councils for other purposes, such as for in-season or post-season management of a fishery, and for stock assessments.)

One source of confusion in *Evaluating Bycatch* is that the report conflates the collection and reporting of bycatch data with the assessment of such data when the report states that “the combination of data collection and analyses that is used to estimate bycatch in a fishery constitutes the SBRM for the fishery” (Appendix 5). NMFS does not believe that the estimation methods must be included in an FMP as part of the standardized reporting methodology. However, neither this rule nor the statute precludes discussion of those estimation methods in an FMP.

While defining “standardized reporting methodology” as something different than bycatch assessment and management measures, NMFS recognizes the interconnectedness of these steps. This proposed rule addresses the interrelation between these steps by explaining the purpose of SBRM (proposed section 600.1600) and requiring that data resulting from the

methodology be useful, in conjunction with other relevant sources of data, in meeting the purpose of the SBRM and fishery-specific bycatch objectives (proposed section 600.1610((a)(2)(i)). (*See Purpose of an SBRM*, above.)

Meaning of “Standardized”

The proposed rule also clarifies that “standardized” does not mean that reporting methodologies must be standardized at a regional or national level. Proposed section 600.1605(a) explains that a standardized reporting methodology may vary from one fishery to another (including among fisheries managed in the same FMP). However, the methodology must provide a consistent approach for collecting, recording, and reporting bycatch data within a fishery. For example, a reporting methodology that relies on self-reported logbook data may be appropriate for one fishery, while at-sea observer coverage may be more appropriate for other fisheries. As long as the reporting methodology for a fishery provides for a consistent approach for collecting, recording, and reporting bycatch data for all the participants in that fishery, then the methodology would be considered “standardized” under the proposed rule’s definition.

Considerations for Establishing or Reviewing an SBRM

This proposed rule acknowledges that whether a methodology is appropriate for a fishery will depend on the specific circumstances of the fishery. This proposed rule frames policy choices associated with establishing an SBRM by providing “required factors” for establishing or reviewing an SBRM (proposed section 600.1610(a)(2)(i)), and by recommending additional factors that may be considered by the Councils (proposed section 600.1610(a)(2)(ii)).

Proposed section 600.1610(a)(2)(i) states that data resulting from the methodology must be useful, in conjunction with other relevant sources of data, in meeting the purpose of the methodology as described in section 600.1600 and fishery-specific bycatch objectives. This

requires a Council, when establishing or reviewing a methodology, to consider the conservation and management objectives of the fishery with respect to bycatch, the data quality associated with the methodology, and information about the characteristics of bycatch in the fishery, when available (such as the amount of bycatch occurring in the fishery, the importance of bycatch in estimating the total mortality of fish stocks, and the importance of bycatch to related ecosystems). Because data resulting from an SBRM will be used, along with other relevant information, to inform the assessment of the amount and type of bycatch occurring in a fishery, a Council should consult with its scientific and statistical committee, advisory panels, and the NOAA science centers, as appropriate, on data elements, reporting frequency, and other design and methodology factors (proposed section 600.1610(b)). Another required consideration when establishing or reviewing a methodology is its feasibility, from cost, technical, and operational perspectives. In addition, the proposed rule requires that each SBRM be designed to be implemented within available funding.

The proposed rule also recognizes that other factors may be relevant to establishing an SBRM. Therefore, proposed section 600.1610(a)(2)(ii) provides that Councils may also consider the overall magnitude and/or economic impact of the fishery, and the scientific methods and techniques available to collect and report bycatch data that could improve the quality of the bycatch estimates.

NMFS recognizes that a court decision held that operational constraints (such as funding) are not an excuse for failing to “establish” an SBRM. (*See Oceana v. Locke*, 670 F.3d 1238 (D.C. Cir. 2011).) However, NMFS does not believe that this court decision stands for the proposition that costs cannot be taken into consideration at all when developing or revising an SBRM. The case did not discuss National Standard 7, which explicitly requires that

conservation and management measures (which would include data collection, recording, and reporting requirements employed under an SBRM) “where practicable, minimize costs and unnecessary duplication” (section 301(a)(7), 16 U.S.C. 1851(a)(7)). If the Council proposes an FMP or FMP amendment with an SBRM that is not designed to be implemented within available funding or that is not feasible, NMFS may need to disapprove or partially disapprove that FMP amendment. Therefore, this proposed rule provides that Councils must consider feasibility when establishing or reviewing an SBRM.

Proposed section 600.1610(a)(2)(i) requires that data resulting from the methodology be useful, in conjunction with other relevant sources of data, in meeting the purpose of the methodology as described in section 600.1600 and fishery-specific bycatch objectives. However, proposed section 600.1610(a)(2)(i) does not include specific standards regarding the precision or accuracy of bycatch estimates, as NMFS does not believe that section 303(a)(11) requires that an SBRM produce data that will generate estimates to a particular standard of statistical accuracy or precision. (*See also* 50 CFR 600.350(d)(2), recognizing under National Standard 9 Guidelines that “[d]ue to limitations on the information available, fishery managers may not be able to generate precise estimates of bycatch and bycatch mortality or other effects” for measures under consideration.) As explained above, other sources of data – beyond data from an SBRM – are used in bycatch assessments. In addition, different fisheries have different bycatch issues and concerns. This proposed rule recognizes the diversity of fisheries across the country and provides for a fishery-specific evaluation of the factors outlined in proposed section 600.1610(a)(2), while still ensuring that SBRMs will produce data that will be useful in meeting the statutory purpose of SBRMs. Based on its evaluation of the factors, a Council may determine that different levels of uncertainty are acceptable for different fisheries. For example,

although an increase in observer coverage levels in a fishery would reduce uncertainty of bycatch estimates, such an increase may not be feasible from a cost or safety standpoint, may not be necessary to assess bycatch in the fishery, or may not be useful in developing conservation and management measures for bycatch in that fishery. The proposed rule would allow a Council to evaluate whether an incremental improvement in data quality is justified in light of the purpose of SBRM and other factors outlined in sections 600.1610(a)(2)(i) and (ii).

Some courts have addressed bycatch estimates or the quality of data in the context of particular FMPs or amendments. (*See, e.g., NRDC v. Evans*, 168 F.Supp.2d 1149, 1154 (N.D. Cal. 2001), asserting that NMFS failed to address the SBRM requirement and its “duty to obtain accurate bycatch data”; and *Oceana v. Evans*, 384 F.Supp.2d 203, 234-235 (D.D.C. 2005), finding that NMFS failed to analyze what type of program would “succeed in producing the statistically reliable estimates of bycatch needed to better manage the fishery” and to address an accuracy concern in a scientific study.) However, these opinions were based on the specific records before the courts, and did not engage in comprehensive statutory construction of the SBRM provision. NMFS believes that the approach of this proposed rule is consistent with MSA section 303(a)(11) and will ensure that SBRMs are developed consistent with the statutory purpose for SBRMs (proposed section 600.1600), while allowing Councils to address the unique circumstances of particular fisheries.

NMFS clarifies that the *Evaluating Bycatch* report should not be treated as the agency’s interpretation of the SBRM provision; that is the purpose of this proposed rule. A Council may continue to use the *Evaluating Bycatch* report, as explained below. NMFS notes that the *Evaluating Bycatch* report discusses accuracy and precision in the context of bycatch estimates from observer data. (*See Evaluating Bycatch* at 35-39.) The report describes the accuracy of an

estimate as “the difference between the mean of the sample and the true population value,” and the precision of an estimate as “essentially how repeatable an observation would be if a number of independent trials were to be conducted.” (*Id.* at 38.) To address these issues, the *Evaluating Bycatch* report provided “precision goals” expressed as “coefficient of variation” (CV), which is the ratio of the square root of the variance of the bycatch estimate (i.e. the standard error) to the estimate itself. The lower the CV, the more precise (and less uncertain) is the bycatch estimate. (*Id.* at 35.) The report makes clear that there are a variety of situations in which precision goals for bycatch estimates may not be useful to consider when designing bycatch data collection and reporting methods, and in which achieving such goals may not be feasible. The report lists numerous caveats for using precision goals in the context of bycatch reporting/monitoring programs. (*Id.* at Executive Summary, 58.)

While observer programs may be included as part of an SBRM, the MSA does not require their inclusion in every SBRM. (*See* 16 U.S.C. 1853(a)(11), (b)(8).) Moreover, under this proposed rule, bycatch estimation is not included in the definition of standardized reporting methodology. If a Council finds that it would be helpful to consider CV goals for bycatch estimates when it designs an SBRM, this proposed rule would not preclude that. A Council may continue to use the *Evaluating Bycatch* report for information on CV goals, considerations for observer programs, etc., as appropriate, although NMFS advises Councils to take into consideration that *Evaluating Bycatch* is over a decade old, and that technologies and science have evolved considerably since its publication in 2004.

Documenting the Establishment of an SBRM

To document that an SBRM is “established,” proposed section 1600.1610(a)(1) requires that every FMP contain a description of the required bycatch data collection, recording, and

reporting procedures that constitute the SBRM for each fishery managed under it. The description must also provide a statement explaining why the methodology is appropriate for the fishery as guided by mandatory and discretionary factors described in proposed section 1600.1610(a)(2). The explanation required by proposed section 1600.1610(a)(1) must be based on a thorough analysis of all the factors evaluated in establishing a standardized reporting methodology. The explanation must be contained in the FMP, but it may incorporate by reference analyses in FMPs, FMP amendments, Stock Assessment and Fishery Evaluation (SAFE) reports or other documents. The description and explanation of the SBRM will clarify for the public and interested stakeholders the policy choices that the Council considered in establishing the SBRM.

Adaptable Implementation of an SBRM

With this proposed rule, NMFS also seeks to ensure that the Councils have sufficient flexibility to adjust implementation of an established SBRM in a way that is clear to the public, but that does not necessarily require an FMP amendment. This proposed rule provides that, if a Council anticipates that adjustments will be necessary to implement the methodology, the Council may, consistent with the requirements of the MSA and other applicable law, consider adopting a process in an FMP to adjust implementation of the methodology. A Council may consider adopting such a process based on factors, which include, but are not limited to, available funding, management contingencies, or scientific priorities. If such a process is adopted, the FMP must describe the process by which the Councils or NMFS plan to implement the desired adjustments to an SBRM. (*See* proposed section 600.1610(c)). Such adjustments may include fine tuning the intensity, focus, or frequency of the required data collection procedures specified in the FMP. Such a process could reflect existing annual or multi-year

processes already in use by a Council, such as framework adjustments or annual specifications. The process must clearly describe considerations that will drive those adjustments. The need for such a process may be particularly relevant to SBRMs that are heavily dependent on the use of observers to collect bycatch data. NMFS also believes that there may be instances in which changes to the underlying conservation and management objectives for the fishery, funding, available technology, or other factors may trigger a complete review and possible revision of the SBRM. It is important that the public understands, upfront, the limits of applying such adjustments under an established SBRM and how the Council will determine that a reevaluation of the established methodology is warranted. With this proposed rule, NMFS seeks to clarify how an SBRM can be “established” and “standardized” while still providing necessary flexibility to implement the SBRM.

Review of SBRMs

Proposed section 600.1610(d) provides that all FMPs must be consistent with this rule within 5 years of finalizing the rule. To verify consistency with this rule, Councils should conduct a review of their existing SBRMs. The review should provide information to determine whether or not an FMP needs to be amended. The analysis and conclusions from the review should be documented but do not need to be contained in an FMP.

There are several potential outcomes of the review. A review could find that there are FMPs with existing SBRMs that are consistent with this rule, in which case no FMP amendments are necessary. Other FMPs may define SBRMs more expansively than the definition in this proposed rule. For example, they may contain components that are consistent with this proposed rule, along with additional components that are not precluded by this rule, but are not minimally required. Those FMPs may not require further amendments. Still other FMPs may describe

procedures or activities that comprise an SBRM but do not explain them in a manner consistent with this rule. In such cases, an FMP amendment may be warranted.

After the initial review, Councils should periodically review standardized reporting methodologies to verify continued compliance with the MSA and this rule. Such a review should be conducted at least once every 5 years. Proposed section 600.1610(d) is consistent with the review and improvement of data collection methods, data sources, and applications described under the National Standard 9 guidelines at 50 C.F.R. § 600.350(d)(1).

National Environmental Policy Act

NMFS has made a preliminary determination to apply a Categorical Exclusion to this action under the National Environmental Policy Act due to the procedural nature of this action. If and when the provisions of this proposed rule are applied to specific FMPs, the Councils and/or the Secretary would prepare an Environmental Impact Statement (EIS) or Environmental Assessment (EA), as appropriate. NMFS solicits comments on this preliminary determination to use a categorical exclusion.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act (16 U.S.C. 1855(d)), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the other provisions of the Magnuson-Stevens Act and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted,

would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

The purpose of the action is to articulate an interpretation of the basic requirements of the SBRM provision of section 303(a)(11) of the MSA through a rulemaking to promote transparency and consistency. Key components of the proposed rule include:

- 1) a definition of “standardized reporting methodology” as applicable only to the definition of “bycatch” in the MSA and pertaining only to data collection, reporting and recording activities (not bycatch assessment and estimation);
- 2) clarified procedures for establishing, documenting, and reviewing SBRMs under the MSA; and
- 3) an option for adaptable implementation to allow for operational flexibility.

The proposed rule defines a standardized reporting methodology as an established procedure or procedures used to collect, record, and report bycatch data in a fishery or subset of a fishery. It would clarify that the purpose of the methodology is to provide data that will inform the assessment of the amount and type of bycatch occurring in a fishery for use in developing conservation and management measures that, to the extent practicable, minimize bycatch and bycatch mortality. However, the phrase “standardized reporting methodology” in section 303(a)(11) refers only to bycatch data collection, recording, and reporting procedures.

The action proposes a set of factors to help frame policy choices in establishing or reviewing an SBRM. Data resulting from the methodology must be useful, in conjunction with other relevant sources of data, in meeting the purpose of the SBRM and fishery-specific bycatch objectives. This would require Councils to consider conservation and management objectives related to bycatch for a fishery, the quality of the data associated with the methodology, and

information about the characteristics of bycatch in the fishery, when available (such as the amount of bycatch occurring in the fishery, the importance of bycatch in estimating the total mortality of fish stocks, and the importance of bycatch to related ecosystems). The proposed rule also would require that an SBRM be feasible and designed to be implemented with available funding, and addresses the need for an SBRM to be adaptable in response to changes in funding levels or other circumstances. Finally, the proposed rule provides that existing SBRMs should be reviewed at least once every five years. The proposed rule does not require that an SBRM be designed to achieve a particular performance standard or precision goal.

Small entities include "small businesses," "small organizations," and "small governmental jurisdictions." The Small Business Administration (SBA) has established size standards for all major industry sectors in the United States, including commercial finfish harvesters (NAICS code 114111), commercial shellfish harvesters (NAICS code 114112), other commercial marine harvesters (NAICS code 114119), for-hire businesses (NAICS code 487210), marinas (NAICS code 713930), seafood dealers/wholesalers (NAICS code 424460), and seafood processors (NAICS code 311710). A business primarily involved in finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$20.5 million for all its affiliated operations worldwide. For commercial shellfish harvesters, the other qualifiers apply, and the receipts threshold is \$5.5 million. For other commercial marine harvesters, for-hire businesses, and marinas, the other qualifiers apply, and the receipts threshold is \$7.5 million. A business primarily involved in seafood processing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual employment not in excess of 500 employees

for all its affiliated operations worldwide. For seafood dealers/wholesalers, the other qualifiers apply, and the employment threshold is 100 employees. A small organization is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts, with populations of less than 50,000.

All FMPs have established SBRMs according to the requirements in 303(a)(11). This proposed rule would provide national guidance and improved clarity about implementing the existing requirements. The proposed rule would provide the Councils and the Secretary a five-year period within which to review FMPs to make any necessary amendments.

Because the proposed rule would clarify existing requirements for FMPs and is procedural in nature, it would not directly regulate a particular fishery and will not directly alter the behavior of any entities operating in federally managed fisheries. Thus, no direct economic effects on commercial harvesting businesses, for-hire businesses, marinas, seafood dealers/wholesalers, or seafood processors are expected to result from this action. Therefore, no small entities would be directly affected by this rule.

As a result of the information above, a reduction in profits for a substantial number of small entities is not expected. Because this action, if implemented, is not expected to have a significant adverse economic effect on the profits of a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

No duplicative, overlapping, or conflicting Federal rules have been identified. This rule would not establish any new reporting or record-keeping requirements.

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Bycatch, Fisheries, Standardized Reporting Methodology.

Dated: February 19, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 600 as follows:

PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

1. The authority citation for 50 CFR part 600 continues to read as follows:

AUTHORITY: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. Add a subpart R to read as follows:

SUBPART R—STANDARDIZED BYCATCH REPORTING METHODOLOGY

Sec.

600.1600	Purpose and scope.
600.1605	Definitions and word usage.
600.1610	Establishing and reviewing standardized bycatch reporting methodologies in fishery management plans.

§ 600.1600 Purpose and scope.

Section 303(a)(11) of the Magnuson-Stevens Act requires any fishery management plan to establish a standardized bycatch reporting methodology. 16 U.S.C. 1853(a)(11). The purpose

of a standardized reporting methodology is to inform the assessment of the amount and type of bycatch occurring in the fishery for use in developing conservation and management measures that, to the extent practicable, minimize bycatch and bycatch mortality. This subpart sets forth requirements for and guidance on establishing and reviewing a standardized reporting methodology.

§ 600.1605 Definitions and word usage.

(a) *Definitions.* In addition to the definitions in the Magnuson-Stevens Act and § 600.10, *standardized reporting methodology* means an established procedure or procedures used to collect, record, and report bycatch data in a fishery or subset of a fishery (hereafter referred to as “fishery”). “Standardized” procedures may vary from one fishery to another, but must provide a consistent approach for collecting, recording, and reporting bycatch data within a fishery.

(b) *Word usage.* The terms “must”, “should”, “may”, “will”, “could”, and “can” are used in the same manner as in § 600.305(c). The term “Council” is used in the same manner as in § 600.305(c), and includes the regional fishery management Councils and the Secretary of Commerce, as appropriate (16 U.S.C. 1854(c) and (g)).

§ 600.1610 Establishing and reviewing standardized bycatch reporting methodologies in fishery management plans.

(a) *Establishing a standardized reporting methodology—(1) Fishery management plan contents.* All fishery management plans (FMPs) must clearly describe a standardized reporting methodology for each fishery managed under it. The description must state the required bycatch data collection, recording, and reporting procedures for each fishery, which may include, but are not limited to, one or more of the following: observer programs, electronic monitoring and reporting technologies, and self-reported mechanisms (e.g., recreational sampling, industry-

reported catch and discard data). In addition, the description must provide an explanation of why the methodology is appropriate for the fishery. The explanation must be based on a thorough analysis of the factors specified in paragraph (a)(2)(i) and (ii) of this section. The explanation may incorporate by reference analyses in FMPs, FMP amendments, Stock Assessment and Fishery Evaluation (SAFE) reports, or other documents.

(2) *Factors in establishing or reviewing a standardized reporting methodology.* Whether a methodology is appropriate will depend on the specific circumstances of the fishery, as guided by the following factors:

(i) *Required factors.* Data resulting from the methodology must be useful, in conjunction with other relevant sources of data, in meeting the purpose described in § 600.1600 and fishery-specific bycatch objectives. This requires Councils, when establishing or reviewing a methodology, to consider the conservation and management objectives regarding bycatch in the fishery and the quality of the data associated with the methodology. Councils must also consider information about the characteristics of bycatch in the fishery, when available, such as the amount of bycatch occurring in the fishery, the importance of bycatch in estimating the total mortality of fish stocks, and the importance of bycatch to related ecosystems. In addition, the methodology must be feasible from cost, technical, and operational perspectives, and must be designed to be implemented with available funding.

(ii) *Additional factors.* When establishing or reviewing a standardized reporting methodology, a Council may also consider the overall magnitude and/or economic impact of the fishery, and the scientific methods and techniques available to collect and report bycatch data that could improve the quality of the bycatch estimates.

(b) *Consultation.* A Council should consult with its scientific and statistical committee,

advisory panels, and the NOAA science centers as appropriate on data elements, reporting frequency, and other design and methodology factors.

(c) *Adaptable implementation.* If a Council anticipates that adjustments will be necessary to implement the methodology, the Council may, consistent with the requirements of the MSA and other applicable law, consider adopting a process in an FMP to adjust implementation of the methodology. The Council may consider adopting such a process based on factors, which include, but are not limited to, available funding, management contingencies, or scientific priorities. If such a process is adopted, the FMP must:

- (1) Describe the process under which the implementation of a methodology will be adjusted;
- (2) Specify what adjustments (e.g., changes in the intensity, focus, or frequency of required bycatch data collection, recording, and reporting procedures) are authorized under the process;
- (3) Explain why the adjustments may be needed;
- (4) Describe how and when the adjustments will be made;
- (5) Describe the limits to the adjustments; and
- (6) Describe how the Council will determine that a reevaluation of the established methodology is warranted.

(d) *Review of FMPs.* All FMPs must be consistent with this rule within 5 years of the effective date of this rule. Thereafter, Councils should conduct a review of standardized reporting methodologies at least once every five years in order to verify continued compliance with the MSA and this rule.

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